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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

In re College Athlete NIL Litigation

Case No. 4:20-cv-03919-CW

DECLARATION OF KERRY KENNY

1 **A. Personal Background**

2 1. I am Senior Vice President for Television, Media Analytics and Emerging Platforms
3 for The Big Ten Conference, Inc. (“The Big Ten” or the “Conference”). I make this declaration of
4 my own personal knowledge and, if called on to do so, could testify competently to the facts stated
5 herein under oath.

6
7 2. I received my undergraduate degree from Lafayette College in 2007 and began my
8 career in athletics administration as an intern with the Patriot League in 2007. I have previously
9 held a variety of positions at the Conference, including Assistant Director of Compliance, Associate
10 Director of Compliance, Director of Compliance, and Assistant Commissioner of Public Affairs.
11 In those roles, I had a variety of responsibilities with respect to rules compliance, sport
12 administration, public affairs, and health and safety.

13
14 3. I have held the title of Senior Vice President for Television, Media Analytics and
15 Emerging Platforms since July 2021. In that role, I advise the Conference’s Council of Presidents
16 and Chancellors (“COP/C”) on issues related to the Conference’s media rights agreements, and am
17 responsible for the oversight and administration of those agreements, working with network
18 partners, Conference leadership, the COP/C, Athletic Directors, and other stakeholders. I
19 personally participated in the strategy and negotiation of The Big Ten’s broadcast rights agreements
20 announced in August 2022.

21
22 **B. The Big Ten Conference**

23 4. The Big Ten Conference is a Division I collegiate athletic conference headquartered
24 in Illinois. The Conference currently comprises fourteen (14) member institutions, thirteen (13) of
25 which are state universities. The Conference’s members are Indiana University, Michigan State
26 University, Northwestern University, Ohio State University, Pennsylvania State University, Purdue
27 University, Rutgers University, University of Illinois Urbana–Champaign, University of Iowa,
28

1 University of Maryland, University of Michigan, University of Minnesota, University of Nebraska–
2 Lincoln, and University of Wisconsin–Madison. The University of California, Los Angeles and
3 University of Southern California are currently scheduled to join the Conference, effective as of
4 the 2024 academic year.

5
6 5. The Conference sponsors championship events in fourteen (14) men’s sports and
7 fourteen (14) women’s sports. These sports are baseball (for men), basketball, cross country, field
8 hockey (for women), football (for men), golf, gymnastics, ice hockey (for men), lacrosse, rowing
9 (for women), soccer, softball (for women), swimming & diving, tennis, track and field (indoor),
10 track and field (outdoor), volleyball (for women) and wrestling (for men). Most Conference
11 institutions field teams in one or more sports in which the Conference does not sponsor a
12 championship, and in some instances those teams compete in other Conferences solely in those
13 sports (such as women’s ice hockey, in which not enough institutions compete for The Big Ten to
14 sponsor a conference championship).

15
16 **D. Plaintiffs’ Proposal**

17 6. I understand that the Plaintiffs’ expert witnesses in this case have opined that in the
18 absence of NCAA rules preventing conferences or schools from paying student-athletes for the use
19 of their name, image and likeness (“NIL”) rights in broadcasts of sporting events, each “A-5”
20 conference and its member schools would have (since the fall semester of 2016) shared rights fees
21 attributable to broadcasts and other distributions of games and events with student-athletes as
22 follows (I refer to this as “Plaintiffs’ Proposal” through this Declaration):

- 23
24 a) Each conference would determine the total of its broadcast rights fees received from
25 its own license agreements with broadcasters (such as such as FOX, ESPN, The Big
26 Ten Network, etc.) and also from the NCAA men’s basketball tournament and the
27 College Football Playoff.
28

- 1 b) Each academic year, every scholarship football player at a member institution in the
2 conference would be paid 10%, in equal shares, of the broadcast rights fees received
3 by the conference that Plaintiffs contend are attributable to football broadcasts
4 (based in part on the opinion of the Plaintiffs' experts that 75% of any unsegregated
5 broadcast rights fees received are attributable to football).
- 6 c) Each academic year, every scholarship men's basketball player at a member
7 institution in the conference would be paid 10%, in equal shares, of the broadcast
8 rights fees received by the conference that Plaintiffs contend are attributable to
9 men's basketball broadcasts (based in part on the opinion of the Plaintiffs' experts
10 that 15% of any unsegregated broadcast rights fees received are attributable to men's
11 basketball).
- 12 d) Each academic year, every scholarship women's basketball player at a member
13 institution in the conference would be paid 10%, in equal shares, of the broadcast
14 rights fees received by the conference that Plaintiffs contend are attributable to
15 women's basketball broadcasts (based in part on the opinion of the Plaintiffs'
16 experts that 5% of any unsegregated broadcast rights fees received are attributable
17 to women's basketball).
- 18 e) I further understand that Plaintiffs' experts assert or implicitly assume that 5% of
19 the value of the unsegregated broadcast rights fees received by a conference are
20 attributable to the remaining games and events sponsored by that conference.

21 7. I also understand that Plaintiffs' experts have concluded that these revenue-sharing
22 payments would either be made directly by each A-5 conference to the student-athletes or would
23 be distributed to the member schools of each A-5 conference, who would then be required to
24 distribute the funds to student-athletes as outlined above.
25
26
27
28

1 **F. Big Ten Media Agreements and Revenue Sources**

2 8. The Big Ten's member institutions have assigned their telecast and related rights to
3 the Conference. Accordingly, the Conference can and does package those rights together for
4 purposes of negotiating and entering broadcast rights agreements with media partners on behalf of
5 the Conference as a whole.
6

7 9. Since 2017, I have participated in discussions with Big Ten media consultants and
8 staff regarding media rights, and have participated in negotiations with networks concerning
9 licensing of these distribution rights since 2021 in my role as Senior Vice President for Television,
10 Media Analytics and Emerging Platforms. In 2017, the Conference entered agreements with the
11 following broadcast partners, which are set to expire on June 30, 2023:

12 a. *Big Ten Network*. The Conference receives fixed royalty payments in exchange for
13 the Big Ten Network broadcasting games in all Conference-sponsored sports and certain
14 varsity sports sponsored at the institution level.
15

16 b. *Fox*. The Conference receives fixed royalty payments in exchange for Fox
17 broadcasting football and men's basketball games. Fox also has the right, but no obligation,
18 to broadcast women's basketball games and Olympic sports games.
19

20 c. *ESPN*. The Conference receives fixed royalty payments in exchange for ESPN
21 broadcasting football, men's basketball, women's basketball, and Olympic sports games.
22

23 d. *CBS*. The Conference receives fixed royalty payments in exchange for CBS
24 broadcasting men's basketball games.
25

26 10. In addition, the Conference has the following sources of revenue that derive, in part,
27 from broadcast licensing:
28

 a. *College Football Playoff*. A portion of rights fees related to the College Football
Playoff are paid to the Conference each year pursuant to a set of contracts among The Big

1 Ten, nine other Division I conferences, and Notre Dame. The payments incorporate funding
2 from a number of sources, including broadcast rights, sponsorships, ticket sales, souvenir
3 sales, and trademark licenses. The payments vary annually depending on various factors,
4 including how many Big Ten teams participate in the College Football Playoff.

5
6 b. *NCAA distributions*. The Conference receives a share of NCAA revenues, which are
7 passed through to its member institutions. The NCAA's primary source of revenues is its
8 "March Madness" broadcast rights agreement with CBS and Turner for the annual men's
9 college basketball playoff, but the NCAA also receives substantial revenues from
10 sponsorships, ticket sales, and other sources. All of these revenues together are the source of
11 distributions made to the Conference by the NCAA.

12
13 11. As noted above, I had a substantial, personal role in the negotiation of The Big Ten's
14 2022 broadcast rights package, which will be effective starting in July 2023.

15 **H. One Cannot Isolate the "Broadcast NIL" Value In Any Media Rights Deal**

16 12. As noted above, I understand that Plaintiffs' Proposal concludes that student-
17 athletes have NIL rights with respect to broadcasts and that those "rights" have certain value. I
18 have no opinion on whether, as a legal matter, student-athletes actually have such NIL rights.

19 13. Regardless, I am aware of no support for the assumption in Plaintiffs' Proposal that
20 student-athlete NIL rights (assuming such rights exist) would be worth 10% of broadcast revenues.
21 At no time during my participation in the Conference's negotiations with networks—or at any other
22 time—has any network representative or anyone else stated that they believe there was any
23 particular value associated with the NIL rights of any student-athletes in connection with the
24 broadcast of any sporting events. I am further aware of no time when anyone, other than in
25 Plaintiffs' Proposal, has ever tried to assign any monetary value to supposed student-athlete NIL
26 rights in broadcasts.
27
28

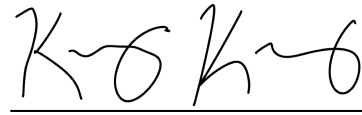
1 14. Further, Plaintiffs' Proposal is based on the incorrect premise that the value of any
2 broadcast NIL rights would be static and unchanging over time. The Proposal also assumes that the
3 value of such rights would be the same from conference to conference and without regard to the
4 individual member institutions whose games would be broadcast under any given agreement. These
5 premises are baseless. Rather, certain sports and member institutions within a Conference are
6 perceived as having more or less value than others in connection with media rights agreements.
7 This is because, among other things, certain conferences, teams, and even individual student-
8 athletes are more attractive to viewers, which causes viewership (and the associated economic value
9 of an individual broadcast) to vary substantially. Further, individualized factors like the game times
10 and dates, the number of commercial spots, the cost of producing games, and other factors all
11 impact the value of a given broadcast. There is thus no support for any conclusion—even if one
12 assumes that student-athlete broadcast NIL has *any* identifiable value in a broadcast agreement
13 (which it does not)—that the value of such broadcast NIL would be the same in each media rights
14 agreement. It would vary from agreement to agreement and conference to conference and over
15 time.
16

17
18 15. I am also unaware of any support for Plaintiffs' Proposal's attempt to allocate
19 revenues from multi-sport broadcast agreements to particular sports. I understand that Plaintiffs'
20 expert witnesses conclude that 75% of each conference's multi-sport broadcast rights revenues are
21 derived from football games, 15% from men's basketball, 5% from women's basketball, and 5%
22 from other sports. To my knowledge, the Conference and its network partners have not allocated
23 any portion of a multi-sport media rights agreement to any individual sport within any agreement.
24

25 16. Further, the same variability that makes Plaintiffs' Proposal's 10%-value
26 assumption unfounded (discussed in ¶ 14 above) makes the Proposal's allocation among sports
27 unrealistic, because those same variables would impact the relative "value" of individual sports in
28

1 individual agreements. Consider, for example, the recent success of the Iowa Hawkeyes women's
2 basketball team, which made it the 2023 NCAA Championship game and received substantial
3 publicity associated with its perceived "star" player. There is no question that this success would
4 impact the "relative" value of any rights package including the Iowa women's basketball team
5 compared to a package that includes no comparable team. Yet Plaintiffs' Proposal would conclude
6 that woman's basketball provides exactly the same value in a package including Iowa as one
7 including no remotely comparable team. In my view, Plaintiffs' Proposal does not reflect the reality
8 that different schools, teams, or student-athletes would have different "broadcast NIL" value.
9

10 I declare under penalty of perjury of the laws of the United States of America that the
11 foregoing is true and correct and that this declaration was executed on April 27, 2023, in Chicago,
12 Illinois.

13
14 
15 Kerry Kenny